

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:16-cv-664-FDW
(3:16-cr-36-FDW-DSC-1)**

TAMARA WILLIAMS-KELLY,)
)
 Petitioner,)
)
vs.)
)
UNITED STATES OF AMERICA,)
)
 Respondent.)

ORDER

THIS MATTER is before the Court on Petitioner’s Motion to Vacate, Set Aside or Correct Sentence under 28 U.S.C. § 2255, which was stamp-filed in this Court on September 12, 2016. See (Doc. No. 1). Judgment in the underlying criminal action was entered against Petitioner on July 20, 2016. (Crim. Case No. 3:16-cr-36-FDW-DSC-1, Doc. No. 22: Judgment). Petitioner filed a Notice of Appeal through counsel on August 3, 2016, and her appeal before the Fourth Circuit Court of Appeals is currently pending.¹ (Id., Doc. No. 24). As such, her petition is premature. The Court will, therefore, dismiss the motion to vacate without prejudice to Petitioner to refile the petition after resolution of her direct appeal.

¹ As one of her two claims, in which she asserts ineffective assistance of counsel, Petitioner argues in the motion to vacate that counsel failed to file a Notice of Appeal on Petitioner’s behalf despite Petitioner’s instruction to do so. Petitioner’s assertion is simply incorrect, as counsel did file such Notice of Appeal on Petitioner’s behalf on August 3, 2016. (Id., Doc. No. 24: Notice of Appeal).

IT IS THEREFORE ORDERED that Petitioner's Motion to Vacate is **DISMISSED**
without prejudice as premature.

Signed: September 20, 2016

A handwritten signature in black ink, appearing to read "Frank D. Whitney", is written over a horizontal line.

Frank D. Whitney
Chief United States District Judge

